

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CORREY MITCHELL,)	Case No. CV 23-3241-CAS (JPR)
)	
Petitioner,)	
)	ORDER SUMMARILY DISMISSING
v.)	PETITION FOR WRIT OF HABEAS
)	CORPUS
TRENT ALLEN, Warden,)	
)	
<u>Respondent.</u>)	

On April 27, 2023, Petitioner filed a Petition for Writ of Habeas Corpus, challenging his 2004 sentence in Los Angeles County Superior Court for carjacking and related crimes. (See Pet., ECF No. 1 at 2.) His various claims essentially boil down to this: his sentence was recalled by the superior court while his case was on appeal; notice of his modified judgment, which increased his sentence by 16 years, was never transmitted to either his appellate counsel or the court of appeal; and therefore his modified judgment has never been reviewed.¹ (See

¹ At times in the Petition and its supporting Memorandum of Points and Authorities, Petitioner frames his claims as challenging procedural errors the state courts allegedly made in considering his recalled-sentence claim when he raised it in those courts. (See, e.g., Pet., ECF No. 1 at 5-6.) But such state-law procedural claims are generally not cognizable on

1 Pet., Mem. P & A., ECF No. 1 at 9-15.)

2 This is not Petitioner's first federal habeas petition,
3 however. On January 10, 2012, the Court denied on the merits his
4 first such petition, in case number CV 08-2747-CAS (FFM). And on
5 September 25, 2020, the Court summarily denied a second,
6 successive petition challenging the same judgment and modified
7 judgment, in which Petitioner raised the same claim he brings
8 here, among others. See Mitchell v. Atchley, No. 20-8636-CAS
9 (JPR) (C.D. Cal. filed Sept. 18, 2020); see id., Pet. & Mem. P. &
10 A. (raising same claim he raises here), ECF Nos. 1 at 3 & 2 at 2-
11 5. On January 14, 2022, the Ninth Circuit Court of Appeals
12 denied Petitioner's request for a certificate of appealability in
13 that case, finding that he had not shown that it was debatable
14 that this Court was wrong in dismissing the 2020 petition as
15 successive. Id., Order, ECF No. 9.

16 The Antiterrorism and Effective Death Penalty Act provides:

17 (b) (1) A claim presented in a second or successive habeas
18 corpus application under section 2254 that was presented
19 in a prior application shall be dismissed.

20 (2) A claim presented in a second or successive habeas
21 corpus application under section 2254 that was not
22 presented in a prior application shall be dismissed
23 unless--

24
25 federal habeas review. See, e.g., Franzen v. Brinkman, 877 F.2d
26 26, 26 (9th Cir. 1989) (per curiam) (holding that "a petition
27 alleging errors in the state post-conviction review process is
28 not addressable through habeas corpus proceedings" in federal
court). In any event, as explained herein, to be able to raise
any claims in this Court, Petitioner would first need permission
from the Ninth Circuit Court of Appeals to proceed with a
successive petition.

1 (A) the applicant shows that the claim relies on a
2 new rule of constitutional law, made retroactive to
3 cases on collateral review by the Supreme Court,
4 that was previously unavailable; or

5 (B)(i) the factual predicate for the claim could
6 not have been discovered previously through the
7 exercise of due diligence; and

8 (ii) the facts underlying the claim, if proven and
9 viewed in light of the evidence as a whole, would
10 be sufficient to establish by clear and convincing
11 evidence that, but for constitutional error, no
12 reasonable factfinder would have found the
13 applicant guilty of the underlying offense.

14 (3)(A) Before a second or successive application
15 permitted by this section is filed in the district court,
16 the applicant shall move in the appropriate court of
17 appeals for an order authorizing the district court to
18 consider the application.

19 28 U.S.C. § 2244(b).

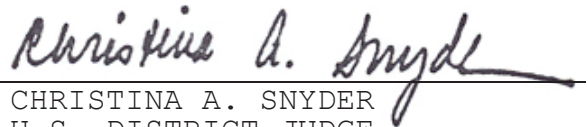
20 The Petition is successive within the meaning of § 2244(b)
21 because it challenges the same judgment and modified judgment as
22 Petitioner's first petition, which was denied on the merits.
23 Indeed, it's also successive to Petitioner's second petition,
24 which raised the same claim he brings here and as to which the
25 Ninth Circuit denied a certificate of appealability on the issue
26 of whether the petition was successive. Under § 2244(b), then,
27 Petitioner was required to secure an order from the Ninth Circuit
28 authorizing this Petition's filing before he filed it. See

1 Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001) (per
2 curiam). A review of the Ninth Circuit's docket indicates that
3 he has not obtained such an order; indeed, he apparently has
4 never even requested one.

5 Because it is successive and unauthorized, the Petition is
6 SUMMARILY DISMISSED without prejudice to its refiling should
7 Petitioner obtain the necessary permission from the Ninth
8 Circuit. See R. 4, Rs. Governing § 2254 Petitions in U.S. Dist.
9 Cts. ("If it plainly appears . . . that the petitioner is not
10 entitled to relief . . . the judge must dismiss the petition
11").

12 IT IS SO ORDERED.

13
14 DATED: May 15, 2023


CHRISTINA A. SNYDER
U.S. DISTRICT JUDGE

15
16 Presented by:


JEAN ROSENBLUTH
18 U.S. Magistrate Judge